



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 24, 2015

Mr. Sean McGarvy
6910 Network Place
Indianapolis, IN 46278

Re: Formal Complaint 15-FC-158; Alleged Violation of the Access to Public Records Act by the Office of Corporation Counsel

Dear Mr. McGarvy,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis, Office of Corporation Counsel ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office has responded to your complaint via Ms. Samantha DeWester, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 11, 2015.

BACKGROUND

Your complaint dated May 11, 2015 alleges the City of Indianapolis, Office of Corporation Counsel violated the Access to Public Records Act by failing to provide records responsive to your request.

On April 16, 2015, you issued a request for body camera footage. The initial request was for all recordings from April 12, 2015. This request was denied, citing the investigatory records exception. You clarified your request, by stating you are seeking recordings from that particular day from officers investigating a homicide on April 12, 2015 and recordings made by officers not part of that particular incident. The request was denied for the same reason –the citing the investigatory records exception. You contend this exception is improper.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind.



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Code § 5-14-3-1. The City of Indianapolis, Office of Corporation Counsel is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The APRA continues by defining a "public record" as:

any writing, paper, report, study, map, photography, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, electronically stored data, or any other material, regardless of form or characteristics.
Ind. Code § 5-14-3-2(n),

Therefore, any video recorded by an IMPD police officer using a body camera would qualify as a public record.

As of yet, the Indiana General Assembly has not passed any legislation regarding the release of law enforcement body camera footage. To that end, the legislature has resolved to study the issue this summer in anticipation of proposed legislation in the 2016 session.

Resolution 15-01(9) reads that the General Assembly will focus on the following issues:

A) The following concerning public records requests for police body camera video:

(1) Whether additional exemptions are needed in the open records law (IC 5-14-3) to prevent the disclosure of private information caught on police body camera video, including interiors of private homes, medical information, juveniles, witnesses, and victims.

(2) Restricting the scope and size of public records requests for police body camera video.

(3) Restricting the persons and agencies that may obtain police body camera video by making a public records request.

(4) Restricting the purposes for which police body camera video may be used.



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(5) The ability of a public agency to search, redact, and edit police body camera video to remove nondisclosable information.

Until any laws are passed on the subject, the issue can be examined under existing statute. Under Ind. Code § 5-14-3-4(b)(1), the release of investigatory records of law enforcement agencies is at the discretion of the agency. The records requested were created by the Indianapolis Metropolitan Police Department. IMPD is a law enforcement agency, and as such may exercise discretion when deciding to release investigatory records.

There is no doubt this exemption is broad. And when counseling law enforcement agencies, I caution them to exercise discretion only when necessary to preserve the integrity of an investigation or for public safety reasons.

While there has been no legislative action mandating the release of footage from Indiana law enforcement officer's body cameras, IMPD should use the investigatory exception judiciously. In order to perform the functions of a police department, IMPD must evaluate the threat of potential compromise to each investigation in which there is a public records request. In order to fulfill its purpose of protecting the public, IMPD is within the legal bounds in its decision to exempt certain records from disclosure.

However, such discretion must be used within the bounds of reason if body camera technology is to be successfully used to foster better relationships between police departments and communities, while promoting transparency between law enforcement and the people and communities they protect and serve.

Furthermore, records requests must be stated with reasonable particularity. See Ind. Code § 5-14-3-4(b)(1). You requested an entire days worth of body camera footage. In order to obtain this footage, an officer would need to screen every minute of the entire day's recording in order to identify which segments could be released. The essential function of law enforcement is to protect communities and investigate possible criminal activity. Any time an officer is called to a scene, the function could very well be (although not always) classified as investigatory. Thus, a law enforcement agency must evaluate the particular footage being requested before making a decision whether or not to release said footage. Any records request must be more specific, in order that IMPD can identify the requested footage and whether it can be released to the public. Although there are no statutory standards, a request for all IMPD footage for a particular day is too broad in



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scope and therefore lacks reasonable particularity. My recommendation is to identify a specific officer's footage for a reasonably narrow period of time during a shift.

It is my expectation the General Assembly will soon examine the issue and hopefully set forth statutory guidelines for law enforcement and the public on this important matter.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of Indianapolis; Office of Corporation Counsel has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Samantha DeWester, Esq.